

1 Richard & Mary Hartzell
2 4299 NE 29th St
3 Redmond OR 97756

4

5 UNITED STATES DISTRICT COURT
6 DISTRICT OF OREGON

FILED 10 AUG 24 16:30 USDC-ORE

RICHARD AND MARY HARTZELL.

Case # 10-6230-HO

Plaintiff,

vs.

Quality Loan Service Corp

**PETITION FOR NO ANSWER
DEFAULT**

Defendant

7 **PARTIES**

8 **PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT**

9 Plaintiff asks the court clerk to enter a default against defendant, as authorized by Federal
10 Rule of Civil Procedure 55.

11 **A. Introduction**

12 1. Petitioner is Richard & Mary Hartzell, 2511 NE Yucca Ave Redmond OR 97756.
13 Currently Known Defendant(s) are/is: Quality Loan Service Corp, 2141 5th Avenue, San
14 Diego, CA 92101, by and through its attorney.

15 2. On 03/03/2010 plaintiff sued defendant for breach of fiduciary duty, fraud, fraud by
16 nondisclosure, and violations of various consumer protection laws.

17 3. On 08/03/2010, plaintiff filed with the court an ORIGINAL COMPLAINT. On
18 08/05/2010 defendant was served with a copy of plaintiff's complaint by and through personal
19 delivery by a process server. A copy of the return of service is attached as Exhibit A. Defendant
20 did not file a responsive pleading or otherwise defend the suit.

21 4. Plaintiff is entitled to entry of default.

22

23 PETITION FOR NO ANSWER DEFAULT

B. Argument

5. The court clerk may enter a default against a party who has not filed a responsive pleading or otherwise defended the suit. Fed. R. Civ. P. 55(a); *see United States v. \$23,000 in U.S. Currency*, 356 F.3d 157, 163 (1st Cir. 2004); *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996); *United States v. 51 Pieces of Real Prop. Roswell, N.M.*, 17 F.3d 1306, 1314 (10th Cir. 1994).

6. The clerk should enter a default against defendant because defendant did not file an answer within 20 days after 08/05/2010, the date of service. Fed. R. Civ. P. 12(a)(1)(A)(i).

7. Plaintiff meets the procedural requirements for obtaining an entry of default from the clerk as demonstrated by Paul R. Doroshuk's sworn affidavit, attached as Exhibit A. Said affidavit establishes by sworn testimony of Plaintiff that Defendant failed to answer or otherwise defend the instant action within the 20 day time period allowed by law.

8. Defendant is not a minor or an incompetent person. See Fed. R. Civ. P. 55(b)(1).

9. Defendant is not in military service. *See* 50 U.S.C. app. §521(b)(2). An affidavit of defendant's military status is attached as Exhibit A.

10. Because defendant did not file a responsive pleading or otherwise defend the suit, defendant is not entitled to notice of entry of default. *Haw. Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 512 (9th Cir. 1986); see Fed. R. Civ. P. 55(a).

C. Conclusion

11. Plaintiff filed a suit against defendant in the court on the 08/03/2010. Defendant failed to timely answer or otherwise defend said action and, thereby, Plaintiff is entitled to judgment against defendant in all things requested by Plaintiff in the suit. For these reasons, plaintiff asks the clerk to enter a default in favor of plaintiff.

Respectfully Submitted,

Respectfully Submitted,
 
Richard Hartzell Mary Hartzell

VERIFICATION

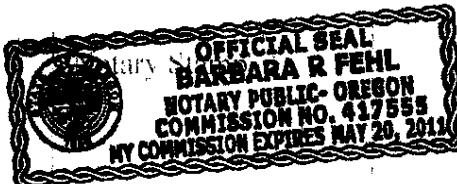
We, Richard & Mary Hartzell, do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of my knowledge.

Richard & Mary Hartzell
4299 NE 29th St
Redmond OR 97756

SWORN TO AND SUBSCRIBED BEFORE ME, Barbara K. Jehl, by Richard & Mary Hartzell on the 24th day of August, 2010, which witnesses my hand and seal of office.

Barbara F. Fehl

**NOTARY PUBLIC IN AND FOR
THE STATE OF OREGON**



UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

Richard & Mary Hartzell

vs.

Quality Loan Service Corp

Case No. 10-6230-HO

DECLARATION OF SERVICE

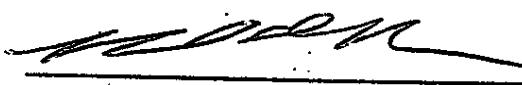
Party Served:
Quality Loan Service Corp
 Date Served:
08/05/10

I, the undersigned declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the above named person the following documents:
 See "Attachment to Declaration of Service"
 in the following manner: (check one)

- 1) By personally delivering copies to the person served.
- 2) By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left.
- 3) By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of his office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left.
- 4) By placing a copy in a separate envelope, with postage fully prepaid, for each address named below and depositing each in the U.S. Mail at

on , 20

Executed on August 5th , 2010 at 1:01 PM


 Paul R. Doroshuk
 Lic # CA PI 21983
 619-234-8892
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 1901 First Avenue, 1st Floor
 San Diego, CA 92101